

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

U.S. BANK NATIONAL	)	CIV. NO. 14-00167 SOM-BMK
ASSOCIATION, AS TRUSTEE FOR	)	
THE HOLDERS OF THE BEAR	)	FINDINGS AND
STEARNS ALT-A TRUST 2006-3	)	RECOMMENDATION TO GRANT
MORTGAGE PASS-THROUGH	)	PLAINTIFF'S MOTION TO
CERTIFICATES, SERIES 2006-3,	)	REMAND ACTION REMOVED
	)	FROM THE CIRCUIT COURT OF
Plaintiff,	)	THE FIRST CIRCUIT, STATE OF
	)	HAWAII
vs.	)	
	)	
SCOTT ALLEN STROBEL;	)	
STEPHANIE ANN STROBEL;	)	
BANK OF AMERICA, N.A;	)	
MILILANI TOWN ASSOCIATION,	)	
	)	
Defendants.	)	
_____	)	

FINDINGS AND RECOMMENDATION TO GRANT  
PLAINTIFF'S MOTION TO REMAND ACTION REMOVED FROM THE  
CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

Before the Court is Plaintiff's Motion to Remand Action Removed from the Circuit Court of the First Circuit, State of Hawaii (Doc. 10). Defendants did not file an opposition memorandum to the Motion. After careful consideration of the Motion and the supporting memorandum, the Court finds and recommends that Plaintiff's Motion to Remand be GRANTED.<sup>1</sup>

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<sup>1</sup> The Court elects to decide this Motion without a hearing, pursuant to Local Rule 7.2(d).

## BACKGROUND

On February 19, 2013, Plaintiff filed the Complaint for Mortgage Foreclosure in the Circuit Court of the First Circuit in the State of Hawaii. (Doc. 10, Ex. 1.) On August 4, 2013, Plaintiff served the Complaint upon Defendants Scott Allen Strobel and Stephanie Ann Strobel. (Id., Exs. 2-3.) Nearly ten months later, on May 24, 2014, Defendants filed their Notice of Removal. (Doc. 1, Notice of Removal.) Defendants failed to serve Plaintiff with any Notice of Removal. (Rana Decl'n ¶ 8.) Plaintiff now seeks to remand this case back to state court, arguing that removal of this case was untimely and that Defendants failed to notify Plaintiff of the removal.

## DISCUSSION

“The notice of removal of a civil action or proceeding *shall be filed within thirty days after the receipt by the defendant*, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b) (emphasis added); Countrywide Home Loans Inc. v. Church of Hawaii Nei, Civ. No. 06-00250 JMS-LEK, 2006 WL 2338211, at \*3 (D. Haw. Aug. 9, 2006) (“Since Defendant filed the notice of removal more than thirty days after service of the Complaint, remand to state court is appropriate.”). Here, Plaintiff served the Complaint on Defendants on August 4,

2013 (Doc. 10, Exs. 2-3), but Defendants did not file their Notice of Removal until May 24, 2014, more than thirty days from when they were served with the Complaint. (Doc. 1, Notice of Removal.) Therefore, Defendants' Notice of Removal is untimely under § 1446(b) and the Court recommends remand of this case. See Beneficial Financial I Inc. v. Grace, Civ. No. 11-00624 SOM-BMK, 2011 WL 6180132, at \* 1 (D. Haw. Dec. 13, 2011) (“The Court finds and recommends that the case be remanded to state court because Defendants’ notice of removal was untimely.”).

Furthermore, the Court finds that Defendants failed to comply with 28 U.S.C. § 1446(d), which required Defendants to “give written notice . . . to all adverse parties” of the notice removal. Such notice was required “[p]romptly after the filing of such notice of removal.” 28 U.S.C. § 1446(d). In this case, Defendants did not serve Plaintiff with the Notice of Removal. (Rana Decl’n ¶ 8.) The Court finds Defendants’ failure to do so in violation of 28 U.S.C. § 1446(d).

### CONCLUSION

In light of the foregoing, the Court finds and recommends that Plaintiff’s Motion to Remand Action Removed from the Circuit Court of the First Circuit, State of Hawaii (Doc. 10) be GRANTED.

Any Objection to this Findings and Recommendation shall be filed in

accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, July 22, 2014.



/S/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

U.S. Bank National Association v. Scott Allen Strobel, Stephanie Ann Strobel, et. al, CIV. NO. 14-00167 SOM-BMK; FINDINGS AND RECOMMENDATION TO GRANT PLAINTIFF'S MOTION TO REMAND ACTION REMOVED FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII.